

TOM NOTESTINE

IBLA 82-1086

Decided June 7, 1983

Appeal from decision of Idaho State Office, Bureau of Land Management, rejecting oil and gas lease offer I-18764.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Exchanges -- Oil and Gas Leases: Lands Subject to -- State Exchanges: Generally

A decision rejecting an oil and gas lease offer will be affirmed where the lands described have been reconveyed to the United States in a land exchange to be administered by the Bureau of Land Management but the lands have not been opened to mineral leasing by an order noted on the public land records.

APPEARANCES: Tom Notestine, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Tom Notestine has appealed the June 17, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which rejected his noncompetitive oil and gas lease offer I-18764 in its entirety because, although title to the lands had been reconveyed to the United States in a State exchange, the lands had not been opened to mineral leasing. The decision stated that the lands in the offer were reconveyed to the United States under State exchange I-8886 and that no opening order had been issued to permit leasing of the land.

The record shows that the subject lands were reconveyed to the United States under State exchange I-8886 by deed dated June 11, 1980. The State exchange application was filed on September 5, 1974, under section 8 of the Taylor Grazing Act of 1934, 43 U.S.C.A. § 315g (West 1964) (repealed, Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579, § 705(a),

90 Stat. 2743, 2792). This statutory authority for exchange has been superseded by section 206 of FLPMA, 43 U.S.C. § 1716 (1976). Oil and gas lease offer I-18764 was filed May 21, 1982. Thus, both the reconveyance of the land and the filing of the lease offer occurred after October 21, 1976, the date of enactment of FLPMA.

On appeal appellant argues that upon acceptance of title to land offered in an exchange, the reconveyed lands became public land available for leasing. Appellant further argues that neither State exchange patent I-8886 nor the deed executed by the State of Idaho require that a notice of the availability of the lands be published in the Federal Register before they became eligible for leasing.

[1] Exchanges of land are governed by section 206 of FLPMA, 43 U.S.C. § 1716 (1976). The implementing regulation 43 CFR 2200.3, states in relevant part:

(a) Lands and interests in lands acquired by exchange shall, upon acceptance of title by the authorized officer, become public lands. Such public lands are not available for location under the mining laws [or] application for sale, entry or mineral leasing. A notice of their availability shall be published in the Federal Register. The notice shall state the date and time of their availability and the forms of authorization. Such availability shall be noted on the public land records.

This is the same result which would have occurred under section 8 of the Taylor Grazing Act. The Department has held that land conveyed to the United States pursuant to an exchange authorized by section 8 of the Taylor Grazing Act does not become subject to oil and gas lease offers immediately upon acceptance of title by the United States, but only pursuant to an order opening the lands to such disposition. Esdra K. Hartley, 58 IBLA 329 (1981); see Petro Leasco, Inc., 42 IBLA 345 (1979). As the Board stated in Petro Leasco, Inc.:

[W]e have discerned nothing in the legislative history of FLPMA which arguably suggested congressional intent to abolish the Department's administrative practice of issuing restoration and opening orders. Moreover, we do not choose to assume that the Congress was unaware of this long practice or precedent applicable thereto. In our view, mandates of the Act are best served by adhering to the sound policy of fair and orderly administration of the public lands, until such time as the Secretary may promulgate a different or contrary rule.

* * * We further hold that acquired lands administered by BLM are not subject to appropriation unless and until opening orders are duly noted on the land records in the manner prescribed and set forth in the BLM Manual, *supra*.

42 IBLA at 353-54.

As there have been no orders opening the tracts for which appellant applied to disposition, they are not open to oil and gas leasing under the Mineral Leasing Act. An offer to lease filed for lands which are not available for leasing must be rejected. Esdras K. Hartley, supra. Thus, it was proper for BLM to reject the oil and gas lease offer of appellant as to the reconveyed lands.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

